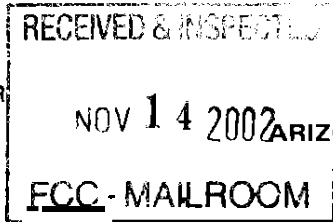


WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER



DOCKET FILE COPY ORIGINAL

BRIAN C. McNEIL  
EXECUTIVE SECRETARY



November 7, 2002

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
TW-A325  
Washington, D.C. 20554

Re: Telecommunications Carriers – Use of Customer Proprietary Network  
Information **CC Docket No. 96-115**

Implementation of the Non-Accounting Safeguards of Sections 271 and 272  
of the Communications Act of 1934, As Amended **CC Docket No. 96-149**

2000 Biennial Annual Review of Policies and Rules Concerning Unauthorized  
Changes of Consumer's Long Distance Carriers **CC Docket No. 00-257**

Dear Secretary Dortch:

On October 21, 2002, the Arizona Corporation Commission electronically filed a Petition For Clarification and/or Reconsideration in the above referenced matter. It has come to our attention that we mistakenly left off Docket No. 96-115 in electronically filing the document and referenced only Docket No. 96-149 on our electronic filing, a Docket consolidated with 96-115. **As** a result, we are hereby electronically re-filing our Petition For Clarification and/or Reconsideration to reference Dockets No. 96-115 and 00-257 as well. We are also sending another copy via first class mail which also contains our confirmation of electronic filing on October 21, 2002.

I apologize for any inconvenience this may have caused. Please do not hesitate to contact me at (602)542-6022, if you have any questions or concerns regarding this matter

Sincerely,

A handwritten signature in black ink, appearing to read "Maureen A. Scott".  
Maureen A. Scott

MAS:daa

cc: Marcy Grecnc, Competition Policy Division  
Janice Myles, Common Carrier Bureau  
Qualex International

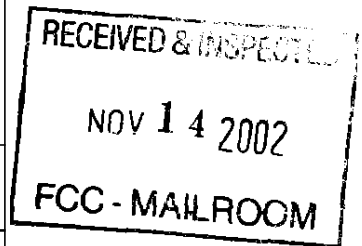
No. of Dockets Filed  
LISTARCODE 0



# Federal Communications Commission

The FCC Acknowledges Receipt of Comments From ...  
**Arizona Corporation Commission**  
 ...and **Thank You for Your Comments**

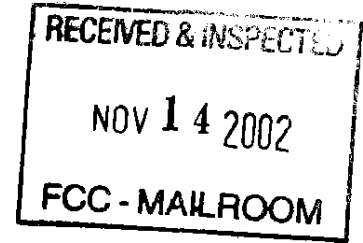
Your Confirmation Number is: '20021021085028 '		
Date Received: Oct 21 2002		
Docket: 96-149		
Number of Files Transmitted: 2		
File Name	File Type	File Size (bytes)
PETITION FOR RECONSIDERATION	Microsoft Word	38401
PETITION FOR RECONSIDERATION	Microsoft Word	945153
<b>DISCLOSURE</b>		
<p>This confirmation verifies that ECFS has received and accepted your filing. However, your filing will be rejected by ECFS if it contains macros, passwords, redlining, read-only formatting, a virus or automated links to source documents that is not included with your filing. Filers are encouraged to retrieve and view their filing within 24 hours of receipt of this confirmation. For any problems contact the <b>Help</b> Desk at 202-418-0193.</p>		



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updated 02/1 1/02

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554



In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996:	)	
	)	
Telecommunications Carriers' Use of	)	CC Docket No. 96-115
Customer Proprietary Network	)	
Information And Other Customer	)	
Information;	)	
	)	
Implementation of the Non-Accounting	)	CC Docket No. 96-149
Safeguards of Sections 271 and 272 of the	)	
Communications Act of 1934, As	)	
Amended	)	
	)	
2000 Biennial Regulatory Review -	)	CC Docket No. 00-257
Review of Policies and Rules Concerning	)	
Unauthorized Changes of Consumers'	)	
Long Distance Carriers	)	

THE ARIZONA CORPORATION COMMISSION'S  
PETITION FOR CLARIFICATION AND/OR RECONSIDERATION

On July 25, 2002, the Federal Communications Commission ("FCC") released its Third Report and Order<sup>1</sup> in the above-captioned Dockets. In its Third Report and Order, the FCC resolved several issues in connection with carriers' use of customer proprietary network information ("CPNI") pursuant to section 222 of 1996 Act. More specifically, the FCC adopted an approach that it believes comports with the decision of the United States Court of Appeals for the Tenth Circuit which vacated the FCC's

<sup>1</sup> In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, CC Docket Nos. 96-115, 96-149, Third Report and Order and Third Further Notice of Proposed Rulemaking, FCC 93-27 (rel. Feb. 26, 1998)(Third Report and Order).

requirement that carriers obtain express customer consent for all sharing of CPNI between a carrier and its affiliates, and unaffiliated entities. Pursuant to Section 1.429 of the FCC's Rules, the Arizona Corporation Commission ("ACC") hereby requests that the FCC clarify and/or reconsider its Third Report and Order in this proceeding, in the one respect described below.

The ACC supports the FCC's decision to allow States to adopt more stringent approval requirements than those adopted by the FCC. In doing so, the FCC acknowledged that States may develop different records should they choose to examine the use of CPNI for intrastate services, and may find further evidence of harm, or less evidence of burden or protected speech interests. Accordingly, the FCC has chosen not to apply an automatic presumption that more stringent State rules will be preempted. The ACC supports this change in policy on the FCC's part and concurs with the FCC that it *is* appropriate given the FCC's new rules which permit carriers to use an "opt-out" approval mechanism in some instances

The ACC is concerned that the FCC has gone too far, however, in allowing for disclosure of CPNI to any unrelated third-parties, even under an "opt-in" regime. Section 222(c)(2) requires express written authorization by a customer before a carrier may disclose CPNI to a third party. That Section provides:

(2) DISCLOSURE ON REQUEST BY CUSTOMERS – a telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer.

Customer approval under Section 222(c)(1) requires at a minimum that the customer's consent be knowing and informed. It would be difficult, if not impossible, to adequately inform the customer of all of *the* potential disclosures that could occur under a policy which allowed disclosure to any unrelated third-party. Without adequate information about who is *to* receive his/her CPNI in the future and for what purpose, the customer cannot be said to make a knowing and informed decision about its release.

Notice to the customer can adequately identify instances where there is a legitimate business relationship between the customer and the third-party, such as in the case of an agent acting on behalf of the telecommunications carrier, or where the customer has selected a new telecommunications provider, so that the customer is adequately informed to whom his CPNI is going to be released and for what purpose. Beyond these types of disclosures to third-parties, the ACC is concerned that a customer's consent (under either opt-out or opt-in) may not be either knowing or informed. A customer has a right under the provisions of 47 U.S.C. Section 222 to know who will receive his or her proprietary account information and for what purpose.

The FCC's approach in its Third Report and Order appears to create a situation where once having given opt-in consent, the consumer has no knowledge of who will receive his or her proprietary information. The ACC is concerned that such a situation leaves the door open for inappropriate, unknown, harmful, and unexpected disclosure of CPNI. The ACC understands that in Arizona, telecommunications carriers do not release CPNI, especially calling patterns or information to any unrelated third parties not providing telecommunications services. The ACC believes that this important protection must be maintained.

In summary, allowing for unlimited release of CPNI to any unrelated third parties, even under an "opt-in" policy; is overly broad given the express wording of Section 222(c)(2). The FCC should clarify and/or reconsider its policies in this regard to ensure that no unintended or inappropriate disclosures of private customer account information occur.

## **CONCLUSION**

For the foregoing reasons, the Commission should reconsider and clarify its Third Report and Order in this Gocket as set forth above.

RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of October, 2002

/s/ Maureen A. Scott

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Maureen A. Scott  
Attorney, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007  
Telephone: (602) 542-6022

Attorneys for the Arizona Corporation Commission

CERTIFICATE OF SERVICE

I do hereby certify that I have this 21<sup>st</sup> day of October, 2002, served all parties to this action with a copy of the foregoing PETITION FOR CLARIFICATION AND/OR RECONSIDERATION by placing a true and correct copy of same in the United States Mail, postage prepaid, addressed to the parties listed below:

Janice Myles  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, Room 544  
Washington, D.C. 20554 *via Federal Express*

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
Room 222 - Stop Code 1170  
1919 M Street, N.W.  
Washington, D.C. 20554 *electronic filing + federal Express*

Qualex International  
The Portals, 445 12<sup>th</sup> Street, S.E  
Room CY-BO2  
Washington, D.C. 20554 *via federal Express*

/s/ Maureen A. Scott

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Maureen A. Scott